Datin Paduka Nur Hayati bt Mohamed v Janavista Sdn Bhd (in liquidation)

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO 12BNCVC-45–06 OF 2015
MOHD FIRUZ JC
13 DECEMBER 2016

Civil Procedure — Judgments and orders — Application to fix time — Appellant's action claiming for specific performance of sale and purchase agreement dismissed by High Court — High Court ordered appellant to pay balance of purchase price after vacant possession and memorandum of transfer delivered by respondent — Respondent terminated sale and purchase agreement — Appellant's appeal to Court of Appeal dismissed — Appellant filed application for order pursuant to O 45 r 6(1) of the Rules of Court 2012 for court to fix time for parties to comply with terms of High Court order — Whether High Court order only provided for general time frame — Whether there was undue delay — Whether facts of case supported appellant's application — Whether stay order by High Court varied rights of vendor to terminate sale and purchase agreement

The appellant and the respondent entered into a sale and purchase agreement ('the SPA') of a property and the appellant had paid 80% of the purchase price leaving the balance of RM138,397.40. Under the SPA, vacant possession of the property was to be delivered to the appellant on 27 September 2007, but the respondent failed to do so. The respondent was wound up and the respondent's liquidator had issued a letter of demand to the appellant claiming for the balance of purchase price. In response, the appellant filed an action in the sessions court claiming, inter alia, for specific performance of the SPA, liquidated ascertained damages and the right to set off the balance purchase price whereas the respondent counterclaimed for the balance of purchase price. The sessions court dismissed the appellant's claim and allowed the respondent's counterclaim. On 4 September 2015, the appellant's appeal to the High Court was dismissed but the court ordered that the appellant pay the respondent the balance purchase price after vacant possession of the property and the memorandum of transfer ('the MOT') was delivered by the respondent to the appellant within 30 days of the said court order ('the High Court order'). On 2 October 2015, the appellant lodged an appeal to the Court of Appeal against the decision of the High Court. Meanwhile, on 13 October 2015, the respondent terminated the SPA on the ground that the appellant had not paid the balance purchase price to the respondent. The appellant had obtained an interim stay on 29 October 2015 and subsequently unconditional stay on 24 November 2015 pending the disposal of the appeal. At the end of the appeal proceedings, the Court of Appeal struck out the appeal. Subsequently,

on 1 June 2016, the appellant's solicitors forwarded two copies of the MOT to the respondent's former solicitors for execution but the latter returned the said documents unexecuted and maintained that the SPA had been terminated. In the present action, the appellant applied for an order pursuant to O 45 r 6(1) of the Rules of Court 2012 for the court to specify the time for both the appellant and the respondent to comply with the terms of the High Court order. The appellant submitted that the High Court order only provided for a general time frame for the order to be complied with ie 30 days and that there was no specific time frame for each party to carry out its part of the order ('the appellant's submission').

Held, dismissing the appellant's application with costs:

(1) The facts of the case did not support the appellant's application. The appellant's submission was rather misguided as the said order showed that the court had ordered for the appellant to pay the balance purchase price after the vacant possession of the property and the MOT be handed over by the respondent to the appellant within 30 days from the date of the order which fell on 4 October 2015. Being aware of this fact, the respondent's solicitors wrote to the appellant's solicitors on 28 September 2015 for the purposes of complying with the order but the appellant did not respond to the said letter. This prompted the respondent to terminate the SPA. Based on exchange of letter between the respective solicitors, the respondent was ready and willing to complete the SPA and deliver vacant possession and title to the appellant but unfortunately, the appellant was not prepared to pay the balance of purchase price. When the appellant obtained the interim stay of execution on 29 October 2015 and the unconditional stay on 24 November 2015, the 30 days' period stipulated by the High Court order had expired (see para 10(a)–(e)).

(2) Even if the appellant did not agree with the respondent's letter stating that it was the appellant who was supposed to prepare the MOT, the appellant should have replied stating that it was the respondent who was to prepare the MOT and not the appellant. The appellant could have also insisted for the MOT and the keys to the property be forwarded to the appellant first, subject to an undertaking that the appellant will thereafter forward the balance of purchase price to the respondent. Yet the appellant did none of the above. There was undue delay for the appellant to only come to the court seeking to revise the time frame of the said order at this late stage and it was unconscionable (see para 10(g)).

(3) The stay orders on 29 October 2015 and 24 November 2015 were not retrospective in effect. Neither could the said orders be said to have suspended or varied the rights of the parties under the SPA, which included the right of the vendor to terminate the SPA due to the failure

of the purchaser to make payment in accordance with the SPA. It is trite that the courts do not rewrite the contracts freely entered into by the parties (see para 10(h)).

[Bahasa Malaysia summary

Perayu dan responden telah memasuki perjanjian jual beli ('PJB') hartanah dan perayu telah membayar 80% daripada harga belian meninggalkan baki bayaran sebanyak RM138,397.40. Di bawah PJB, milikan kosong hartanah tersebut harus diberikan kepada perayu pada 27 September 2007, tetapi responden gagal berbuat demikian. Responden telah digulung dan pelikuidasi responden telah mengeluarkan surat tuntutan terhadap perayu bagi menuntut baki harga belian. Bertindak balas dari itu, perayu telah memfailkan satu tindakan di mahkamah sesyen di mana perayu menuntut, antara lain, pelaksanaan spesifik PJB, ganti rugi yang ditetapkan dan hak untuk mengenepikan baki harga belian manakala responden menuntut balas bagi baki harga belian tersebut. Mahkamah sesyen menolak tuntutan perayu dan membenarkan tuntutan balas responden. Pada 4 September 2015, rayuan perayu di Mahkamah Tinggi telah ditolak tetapi mahkamah telah memerintahkan agar perayu membayar kepada responden baki harga belian tersebut selepas milikan kosong hartanah dan memorandum penyerahan ('MP') diserahkan oleh responden kepada perayu dalam masa 30 hari dari perintah mahkamah tersebut ('perintah Mahkamah Tinggi tersebut'). Pada 2 Oktober 2015, perayu telah memfailkan rayuan kepada Mahkamah Rayuan terhadap keputusan Mahkamah Tinggi. Sementara itu, pada 13 Oktober 2015, responden telah membatalkan PJB tersebut di atas alasan bahawa perayu gagal membayar baki harga belian kepada responden. Perayu telah memperolehi penggantungan interim pada 29 Oktober 2015 dan kemudiannya penggantungan tidak bersyarat pada 24 November 2015 sehingga rayuan tersebut selesai. Di akhir prosiding rayuan, Mahkamah Rayuan menolak rayuan tersebut. Selanjutnya, pada 1 Jun 2016, peguam perayu mengemukakan dua salinan MP kepada bekas peguam responden untuk ditandatangani namun bekas peguam responden telah mengembalikan dokumen-dokumen tersebut tanpa ditandatangani dan menegaskan bahawa PJB telah dibatalkan. Dalam tindakan semasa, perayu memohon bagi satu perintah berdasarkan A 45 k 6(1) Kaedah-Kaedah Mahkamah 2012 agar mahkamah menetapkan masa bagi kedua-dua perayu dan responden untuk memenuhi terma-terma perintah Mahkamah Tinggi tersebut. Perayu berhujah bahawa perintah Mahkamah Tinggi tersebut hanya menyatakan tempoh masa umum bagi memenuhi perintah tersebut iaitu 30 hari dan tiada tempoh spesifik dinyatakan bagi setiap pihak untuk menjalankan tanggungjawab masing-masing berdasarkan perintah tersebut ('hujahan perayu').

Diputuskan, menolak permohonan perayu dengan kos:

(1) Fakta kes semasa tidak menyokong permohonan perayu. Hujahan

perayu adalah silap kerana perintah tersebut menunjukkan bahawa mahkamah telah memerintahkan agar perayu membayar baki harga belian selepas milikan kosong hartanah tersebut dan MP diserahkan oleh responden kepada perayu dalam masa 30 hari daripada tarikh perintah tersebut iaitu pada 4 Oktober 2015. Menyedari fakta ini, peguam responden menulis surat kepada peguam perayu pada 28 September 2015 bagi tujuan memenuhi perintah tersebut tetapi perayu tidak membalas surat tersebut. Ini menyebabkan responden membatalkan PJB tersebut. Berdasarkan pertukaran surat diantara peguam perayu dan responden, responden telah bersedia and sanggup untuk memenuhi PJB tersebut dan menyerahkan milikan kosong dan hakmilik hartanah kepada perayu namun malangnya, perayu tidak bersedia untuk membayar baki harga belian. Semasa perayu memperolehi penggantungan interim pada 29 Oktober 2015 dan penggantungan tidak bersyarat pada 24 November 2015, tempoh 30 hari yang ditetapkan oleh perintah Mahkamah Tinggi telah tamat (lihat perenggan 10(a)–(e)).

(2) Walaupun perayu tidak bersetuju dengan surat responden yang menyatakan bahawa perayu yang sepatutnya menyediakan MP tersebut, perayu sepatutnya membalas surat tersebut dan menyatakan bahawa responden sepatutnya yang menyediakan MP tersebut dan bukan perayu. Perayu juga boleh menegaskan agar MP dan kunci hartanah tersebut diserahkan kepada perayu terlebih dahulu, tertakluk kepada akujanji bahawa perayu akan kemudiannya menyerahkan baki harga belian kepada responden. Namun perayu tidak melakukan perkara di atas. Terdapat kelewatan yang tidak wajar oleh perayu apabila hanya datang kepada mahkamah untuk menyemak semula tempoh masa perintah tersebut pada peringkat akhir ini dan ia tidak berpatutan (lihat perenggan 10(g)).

(3) Perintah penggantungan pada 29 Oktober 2015 dan 24 November 2015 tidak terpakai secara retrospektif. Perintah tersebut juga tidak boleh dikatakan telah menggantung atau mengubah hak pihak-pihak di bawah PJB, termasuk hak penjual untuk membatalkan PJB akibat daripada kegagalan pembeli untuk membuat bayaran berdasarkan PJB tersebut. Ia adalah sesuatu yang mantap bahawa mahkamah tidak mengubah sesuatu kontrak yang dimasuki secara sukarela oleh pihak-pihak (lihat perenggan 10(h)).]

Notes

For a case on application to fix time, see 2(1) *Mallal's Digest* (5th Ed, 2017 Reissue) para 5503.

Cases referred to

Berjaya Times Squares Sdn Bhd (formerly known as Berjaya Ditan Sdn Bhd) v M Concept Sdn Bhd [2010] 1 MLJ 597, FC (refd)

Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd [2004] 1 MLJ 257; [2003] 5 AMR 758, FC (refd)

Liong Seow Keng & Ors v Ho Soon Cheng [2016] 9 MLJ 681; [2016] 6 CLJ 761, HC (refd)

Syarikat Kemajuan Timbermine Sdn Bhd v Kerajaan Negeri Kelantan Darul Naim [2015] 3 MLJ 609, FC (refd)

The Pacific Bank Bhd v Chan Peng Leong [1998] 2 MLJ 613, CA (refd)

Legislation referred to

Courts of Judicature Act 1964 s 25(2)

Rules of Court 2012 O 45 r 6, 6(1)

Peter Douglas Ling (Emila Van Buerle and Leong Phing Ai with him) (Peter Ling & Co) for the appellant.

Venkatachalam a/l Arunachalam (Ven & Assoc) for the respondent.

Mohd Firuz JC:

[1] The present application before me is for an order pursuant to O 45 r 6(1) of the Rules of Court 2012 for this court to specify the time for both the appellant and respondent to comply with the terms of the High Court order issued by Justice Siti Khadijah S Hassan Bajenid on 4 September 2015.

BACKGROUND OF THE APPELLANT'S APPLICATION

[2] The appellant and the respondent entered into a sale and purchase agreement on 27 September 2005 ('the SPA') for the purchase of a property.

The appellant paid 80% of the purchase price amounting to RM553,589.60 leaving a balance of RM138,397.40 payable to the respondent subject to the terms and conditions of the SPA.

Under the SPA, vacant possession of the property was to be delivered to the appellant on 27 September 2007. However, the respondent failed to do so. Pursuant to a court order dated 26 August 2013, the respondent was wound up.

In 2014, the respondent's liquidator issued a letter of demand to the appellant claiming the balance of purchase price failing which the SPA will be terminated.

This prompted the appellant to file a suit in the sessions court claiming, inter alia, specific performance of the SPA, LAD and the right to set off the balance purchase price from the LAD due and owing by respondent to the appellant pursuant to the terms of the SPA.

The respondent, counterclaimed, inter alia, for the payment of the balance purchase price of RM138,397.40.

On 29 May 2015, the sessions court judge dismissed the appellant's claim and allowed the respondent's counterclaim and ordered, inter alia, that the appellant pay the balance of purchase price within 14 days from the date of judgment failing which the respondent had the right to terminate the SPA ('the sessions court judgment').

The appellant appealed to this honorable court against the decision of the sessions court judge.

On 4 June 2015, the sessions court judge granted an interim stay pending the hearing of appellant's formal application for stay.

Subsequently, on 1 July 2015, the sessions court judge stayed the execution of the sessions court judgment on the condition that the appellant's solicitors, Messrs Peter Ling & Co, hold the balance purchase price together with interest and costs amounting to RM157,920.76 as stakeholders pending the disposal of the appeal in this honorable court ('sessions court stay order').

On 4 September 2015, this honorable court dismissed the appeal but ordered that the appellant pay the respondent the balance purchase price after vacant possession of the property and the memorandum of title ('the MOT') is delivered by the respondent to the appellant within 30 days of the said court order ('the High Court order'). The High Court orders reads as follows:

> ... *ADALAH PADA HARI INI DIPERINTAHKAN* bahawa rayuan perayu ditolak tanpa perintah mengenai kos *DAN ADALAH JUGA DIPERINTAHKAN* bahawa pembayaran baki harga belian sebanyak RM138,397.40 oleh perayu hendaklah dibuat selepas milikan kosong hartanah yang dikenali sebagai Lot 18/PT No. 7276, yang dipegang di bawah Lot No. 5685 GM4307 Mukim Kuala Lumpur, Daerah Kuala Lumpur serta Memorandum Pindahmilik hakmilik hartanah tersebut diserahkan oleh responden kepada perayu dalam 30 hari dari tarikh Perintah di dalam ini.

On 28 September 2015, the respondent's solicitors wrote to the appellant's solicitors on 28 September 2015 for purposes of complying with the High Court order.

On 2 October 2015, the appellant lodged an appeal against the decision of this honorable court.

On 13 October 2015, the respondent's solicitors at that time, Messrs S Mathews & Assoc, ('respondent's former solicitors'), issued a notice to

the appellant's solicitors purportedly terminating the SPA on the basis that the appellant had not paid the balance purchase price to the respondent. The appellant disputed the termination by way of a letter dated 16 October 2015.

On 29 October 2015, this honorable court granted an interim stay pending the hearing of the appellant's formal application for stay at the High Court. An unconditional stay of the High Court order was granted on 24 November 2015, pending the disposal of the appeal in the Court of Appeal ('the High Court stay order').

On 20 April 2016, the Court of Appeal struck out the appellant's appeal on the ground that leave was not obtained by the appellant.

On 1 June 2016, the appellant's solicitors forwarded two copies of the MOT to the respondent's former solicitors for execution and requested for additional documents to be provided by the respondent to effect the transfer in accordance with the terms of the High Court order.

The respondent's former solicitors returned the said two copies of the MOT unexecuted and maintained that the SPA has been terminated.

SUMMARY OF THE APPELLANTS' SUBMISSIONS

[3] In essence, the appellants submitted as follows:

(a) that the appellant's application is within the court's jurisdiction;

(b) that there is no termination of the SPA as it was the respondent's duty to deliver vacant possession of the property and the MOT to the appellant first before the appellant could make payment. Until and unless the respondent delivered vacant possession, the respondent was not in a position to demand for the balance of the purchase price;

(c) the SPA cannot be terminated as the appellant is the innocent party in the SPA and had paid 80% of the purchase price whilst the balance 20% has been deposited with the appellant's solicitors as stakeholders pending the respondent's compliance with the High Court order (reliance placed on the Federal Court decision in *Berjaya Times Squares Sdn Bhd (formerly known as Berjaya Ditan Sdn Bhd) v M Concept Sdn Bhd* [2010] 1 MLJ 597);

(d) the issue of the purported termination of the SPA was already dealt with by court during the appellant's application for a stay of execution of the order; and

(e) that the respondent's conduct is unconscionable and it was wrong to allow them to take advantage of their own breach.

SUMMARY OF THE RESPONDENT'S SUBMISSIONS

[4] In brief the respondents submitted as follows:

(a) that the stay order obtained by the appellant had no effect in so far as the termination of the SPA is concerned;

(b) the High Court hearing the stay application did not determine on the issue as to whether the respondent's termination of the SPA was void or in breach of the High Court order; and

(c) the application by the appellant is an abuse of process and/or malafide as the appellant only sought to comply with the terms of the High Court order after her appeal against the order was struck off by the Court of Appeal.

PRINCIPLES APPLICABLE

[5] Order 45 r 6(1) of the Rules of Court 2012 states as follows:

> Notwithstanding that a judgement or order requiring a person to do an act specifies a time within which act is to be done, the Court shall, without prejudice to O 3 r 5, have power to make an order requiring the act to be done within another time being such time after service of that order, or such other time as maybe specified therein.

[6] A reading of the above provision clearly shows that the court is empowered to extend time for doing an act required by a judgement or order as prayed for by the appellant.

[7] I also have no reason to disagree with the decision of Nantha Balan J in *Liong Seow Keng & Ors v Ho Soon Cheng* [2016] 9 MLJ 681; [2016] 6 CLJ 761 relied upon by the appellant wherein it was held that under O 45 r 6 of the Rules of Court 2012, s 25(2) and para 16 of the Schedule to the Courts of Judicature Act 1964 and/or inherent jurisdiction of the court compels the respondent to comply with the earlier court order.

[8] Albeit the court has such powers to grant the order prayed for by the appellant, the court still has to examine the factual matrix of the case in order to determine as to whether the appellant is entitled to such order.

THE COURT'S FINDINGS

[9] Having reviewed the cause papers and submissions by both parties, I am of the view that the facts herein do not support the appellant's application.

[10] My reasons are as follows:

(a) I find that the appellant's submission that *the High Court order dated 4 September 2015 only provides for a general time frame for the order to be complied with ie the 30 days and that there is no specific time frame for each party to carry out its part of the order* (see para 30 of the appellant's submission dated 19 September 2016) rather misguided;

(b) my reading of the said order shows that the court had ordered for the appellant to pay the balance purchase price of RM138,397.40 after vacant possession of the property and the memorandum of transfer for the property be handed over by the respondent to the appellant within 30 days from the date of the order which fell on 4 October 2015;

(c) being aware of this fact, the respondent's solicitors wrote to the appellant's solicitors on 28 September 2015 for purposes of complying with the order, the contents of the letter is reproduced below:

> Your ref : PDL.KL.1290
>
> Our ref : SMA/JC/L/1287/Janavista
>
> Date: 28 September 2015
>
> Peter Ling & Co
>
> B-3A-01, Gateway Corporate Suites
>
> Gateway Kiarams
>
> No 1, Jalan Desa Kiara
>
> Mont Kiara 50480 Kuala Lumpur By Fax: 03-6211 5268 / Post
>
> Dear Sirs,
>
> Re: Kuala Lumpur High Court Civil Appeal No.
>
> Datin Paduka Nur Hayati Binti Mohamed ... Appellant
>
> Janavista Sdn. Bhd. (In Liquidation) ... Respondent
>
> (Sessions Court Summons No. B52NCVC-393-12/2014)
>
> 1. We refer to the above and to your letter dated 28 September 2015 enclosing the draft order dated 4 September 2015.
>
> 2. Prior to approving the same, we write to seek your confirmation on the following:
>
> 2.1 Whether the sum of RM138,397.40 remains held by your firm as stakeholder to be released to our client in accordance with the said order/sale and purchase agreement;
>
> 2.2 Whether you have been appointed by the plaintiff to prepare the memorandum of transfer and if so, kindly forward the same to us for our client's execution immediately;
>
> 2.3 For the convenience of all the parties, kindly let us know of a

suitable date and time the keys and the executed memorandum of transfer can be mutually exchanged with the payment for the balance purchase price prior to 4 October 2015 as required by the said order.

3. Kindly revert to allow us to proceed with the necessary actions.

4. In the interim, kindly take note that our client shall not be responsible for any delay to the completion of the said Order / sale and purchase agreement and all their rights thereunder are duly reserved.

Yours faithfully,

Jason Chan

S. Mathews & Associates

c.c: Client

(d) the appellant however did not respond to the above letter. This prompted the respondent to terminate the SPA by way of notice of termination dated 13 October 2015 for failure of the appellant to pay the balance purchase price (within the time stipulated in the order). The appellant's solicitors refuted this purported termination by a way of a letter dated 16 October 2015. Based on the letters exchanged between the respective solicitors before me, the respondent was ready and willing to complete the SPA and deliver vacant possession and title to the appellant. The appellant, unfortunately, was not prepared to pay the balance purchase price;

(e) the appellant than ran to court and obtained an interim stay of execution of the said order on 29 October 2015 and thereafter an unconditional stay on 24 November 2015. It is to be noted that, by then, the 30 day period stipulated by the High Court order had expired on 4 October 2015;

(f) only after the appellant's appeal was struck off by the Court of Appeal on 20 April 2016 did the appellant seek to revive the SPA based on the 30 day time frame stated in the High Court order. This was refused by the respondent as the SPA had been terminated on 13 October 2015;

(g) it is my view that even if the appellant did not agree with the respondent's letter stating that it was the appellant who was supposed to prepare the memorandum of transfer ('MOT'), the appellant should have replied stating that it was the respondent who is to prepare the MOT and not the appellant. The appellant could have also insisted for the MOT and the keys to the property be forwarded to the appellant first, subject to an undertaking that the appellant will thereafter forward the balance of the purchase price to the respondent. Yet the appellant did none of the above. The appellant only complained about the

respondent's proposal to exchange the MOT and the keys to the property in exchange for the balance purchase price via the letter dated 28 September 2015 to this court after the appeal was struck off. Regretfully, there is undue delay for the appellant to only come to court seeking to revise the time frame of the said order at this late stage and it is unconscionable; and

(h) furthermore, I note that the stay order on 29 October 2015 and 24 November 2015 were not retrospective in effect. Neither can the said orders be said to have suspended or varied the rights of the parties under the SPA, which included the right of the vendor to terminate the SPA due to the failure of the purchaser to make payment in accordance with the SPA. In this regard, it is trite that the courts do not rewrite the contracts freely entered into by the parties.

CONCLUSION

[11] I am of the view that the order sought by the appellant is not one which I can grant as of right as the turn of events has superseded the appellant's application. To allow such would mean that I am turning back the wheel of time by ordering for the stay order to take effect retrospectively prior to the termination of the SPA by the respondent, and also in one broad stroke, to overreach and rule that the termination of the SPA by the respondent was unlawful. I am not convinced that I can grant such consequential orders at this stage.

[12] Indeed, the appellant should have filed an application for a stay of the order dated 4 September 2015 *prior* to the expiry of the 30 day period and the subsequent termination of the SPA by the respondent, not after. The fact that a stay order was granted pending disposal of the appellant's appeal to the Court of Appeal was only to maintain the status quo of the transaction, which already stood as terminated as of the date the stay order was granted, without stating that the termination of the SPA was null, void, or ineffective. Hence, it did not mean that the High Court in granting the stay order was of the view that the termination by the respondent was invalid or void ab initio. To suggest such would mean that a decision in an interlocutory application is final and binding whereas the correct legal position is the opposite as a finding in an interlocutory application cannot be said to be one which finally determines issues between parties (see *Syarikat Kemajuan Timbermine Sdn Bhd v Kerajaan Negeri Kelantan Darul Naim* [2015] 3 MLJ 609) where the Federal Court held as follows:

(3) The limitation issue was not at any stage abandoned by the respondent. The issue was raised and kept alive in the High Court and was argued by both sides in the Court of Appeal. The plea of res judicata with regard to the issue of limitation also failed. The registrar's decision in the interlocutory application was not finally

deteminative of the limitation issue and it was open to the High Court at full trial to review the issue based on the oral and documentary evidence presented ...

[13] In so far as the termination of the SPA is concerned, it must be an issue determined with precision in order to be binding. As in the case of every application for a stay of execution or proceedings, the issue for determination is whether there were special circumstances warranting a stay to be granted or not (see the Federal Court decision in *Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd* [2004] 1 MLJ 257; [2003] 5 AMR 758).

[14] In absence of any written grounds of decision on the granting of the stay application, I am not prepared nor am I in a position to accept the appellant's submission that the court hearing the stay application had determined the issue of the termination of the SPA by the respondent to be invalid when the stay order itself did not say so (see *The Pacific Bank Bhd v Chan Peng Leong* [1998] 2 MLJ 613).

[15] In so far as to whether the act of the respondent in terminating the SPA is valid or otherwise, this is not an issue which is to be determined at this forum as none was sought by the appellant in their notice of application.

[16] Accordingly, the appellant's application is hereby dismissed with cost.

Appellant's application dismissed with costs.

Reported by Dzulqarnain Ab Fatar